IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2372 of 2006
with
FIRST APPEAL No. 2381 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER & 1 - Appellant(s)
Versus
PATEL TRIBHOVANBHAI DEVAKARAN ON BEHALF OF HIRABEN NATHUBHAI & 1 - Respondent(s)

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Appearance :
MR SS SHAH, GOVERNMENT PLEADER for Appellant(s) (In FA 2372/06 to 2375/06)
MS KRINA P.CALLA , ASSTT. GOVERNMENT PLEADER for Appellant(s) (In FA 2376/06 to 2378/06)
MS TANUJA N.KACHCHHI, ASSTT. GOVERNMENT PLEADER for Appellant(s) (In FA 2379/06 to 2381/06)
MR AJ PATEL for Respondent(s)-Claimant(s) (In all FAs)

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 27/12/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. What is challenged in these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated January 24, 2005, rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR) Ahmedabad (Rural) in Land Acquisition Case No.201 of 2001 to 210 of 2001 by which the claimants have been awarded additional amount of compensation at the rate of Rs.28.60 ps. per sq.mt. for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.2.25 ps. per sq.mt. for irrigated lands and Rs.1.50 ps. per sq.mt. for non-irrigated lands by his award dated September 16, 1999.

2. The Executive Engineer, Narmada Yojna, Vinjuwada Branch Canal, Division No.4/5, Mehsana, proposed to the State Government to acquire the lands of village Nayakpura, Taluka: Viramgam, District: Ahmedabad, for the public purpose of construction of canal under

Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Nayakpura, specified in the said proposal, were likely to be needed for the said public purpose Therefore, notification under Section 4 of the Act was issued which was published in the official gazette on December 9, 1997. The land owners, whose lands were proposed to be acquired, were thereafter served with notice under Section 4 of the Act. On receipt of the notice, they opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Nayakpura specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of canal under the Narmada Project. Therefore, notification under Section 6 of the Act issued which was published in the official gazette on June 11, 1998. The interested persons were thereafter served with notices for determination of compensation payable to them. The

claimants appeared before the Special Land Acquisition Officer and claimed commendation at the rate of Rs.30/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated June 16, 1999, offered compensation to the claimants at the rate of Rs.2.25 ps. per sq.mt. for irrigated lands and Rs.1.50 ps. per sq.mt. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the court for determination of just amount of compensation payable to them. Accordingly, References were made to the District Court, Ahmedabad, where they were numbered as Land Acquisition Case Nos.201 of 2001 to 210 of 2001.

3. On behalf of the claimants, witness Bachubhai Thakarshibhai Patel was examined at Ex.33. The witness mentioned in his testimony that the lands acquired were highly fertile and that each claimant was earning the net income of Rs.35,000/- to

Rs.40,000/- per year per Vigha from the sale of agricultural produces such as cumin seeds, cotton, Juwar, millet, wheat, etc. The witness mentioned that earlier the lands from this very village were acquired for the purpose of construction of canal under the Narmada Project and as the claimants of those cases were awarded compensation at the rate of Rs.20/- per sq.mt., they were also entitled to compensation at the same rate. The witness produced the previous award of the Reference Court relating to the lands of this very village at Ex.32. Though this witness was cross-examined at length on behalf of the acquiring authorities, nothing substantial could be elicited.

4. On behalf of the acquiring authorities, witness Kanaiyalal Atmaram Patel, who was then discharging duties as Deputy Executive Engineer, was examined at Ex.35. In his examination-in-chief, the witness mentioned that the Special Land Acquisition Officer had determined amount of compensation payable to the claimants after taking into consideration the relevant facts and therefore, the claimants were entitled to enhanced compensation. However, in his cross-examination, the witness admitted that he had

no personal knowledge about the acquisition proceedings initiated in the instant case. The witness also mentioned that the lands acquired were irrigated lands.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of this very village was a relevant piece of evidence and furnished good guidance for the purpose of determining the market value of the lands acquired in the instant case. The Reference Court further noticed that in the previous case, notification under Section 4(1) of the Act was published in the official gazette on November 13, 1992 whereas in the instant case, it was published in the official gazette on December 9, 1997 and therefore, the claimants were entitled to reasonable rise in price of lands at the rate of 10% p.a. In the ultimate analysis, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs.28.60 ps. per sq.mt. by the impugned award, giving rise to the abovenumbered Appeals.

6. This Court has heard Ms.Krina P.Calla, learned Assistant Government Pleader, for the appellants and Mr.A.J.Patel, learned counsel for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though the claim made by the witness for the claimants that each claimant was earning a sum of Rs.35,000/- to Rs.40,000/- per year per Vigha from the sale of agricultural produces could not be made good, there is no manner of doubt that the lands acquired were fertile and that the claimants were able to raise different crops thereon. The record does not indicate that enhanced compensation was claimed by the claimants either on the yield basis or on the basis of comparable sale instances. What was relied upon by the claimants in support of their claim for enhanced compensation was the previous award of the Reference Court relating to the lands of this very village, copy of which was produced at Ex.32. A perusal of Ex.32 indicated that the lands of village

Nayakpura were acquired for the pubic purpose of construction of canal under the Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on November 13, 1992. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.35 ps. per sq.mt. for irrigated lands and Re.0.90 ps. per sq.mt. for non-irrigated lands, by his award dated June 13, 1996. Feeling aggrieved, the claimants had sought References. Accordingly, References were made which were registered as Land Acquisition Case No.760 of 1998, 766 of 1998 to 778 of 1998. Therein, on behalf of the claimants, witness Vitthalbhai Chaturbhai Patel was examined at Ex.80 whereas on behalf of the acquiring authorities, no witness was examined but certain extracts etc. were produced. In the ultimate analysis, the Reference Court, by judgment and award dated September 30, 2004, awarded additional amount of compensation to the claimants at the rate of Rs.19.10 ps. per sq.mt. Thus, Ex.32 indicates that the claimants, whose lands were acquired form village Nayakpura, were awarded

compensation in all at the rate of Rs.20/- per sq.mt. During the course of hearing of the Appeals, the learned counsel for the appellants has produced a simple copy of the judgment dated December 20, 2006, rendered by this Court in First Appeal No.5093 of 2006 to 5106 of 2006. A perusal of the same indicates that the common judgment and award dated September 30, 2004, rendered by the learned Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), at Navrangpura, in Land Acquisition Case No.760 of 1998 with Land Acquisition Cases No.766 of 1998 to 778 of 1998 was challenged by the acquiring authorities before the High Court and the High Court, by judgment dated December 20, 2006, allowed the same partly by holding that the claimants were entitled to compensation at the rate of Rs.17/- per sq.mt. for their acquired lands. Thus, on the basis of previous award of the Reference Court, this Court is of the opinion that the claimants in the instant case would be entitled to compensation at the rate of Rs.17/- per sq.mt. and not at the rate of Rs.20/- per sq.mt., as held by the Reference Court. However, as noticed earlier, in the previous case,

notification issued under Section 4(1) of the Act was published in the official gazette on November 13, 1992 whereas in the instant case, it was published in the official gazette on December 9, 1997 and in view of time-gap of about five years, the claimants would be entitled to reasonable rise in price of lands at the rate of 10% p.a. So calculated, the claimants would be entitled to compensation at the rate of Rs.25.50 ps. per sq.mt. and not at the rate of Rs.30.85 ps. per sq.mt. for irrigated lands and Rs.30.10 ps. per sq.mt. for non-irrigated lands, as held by the Reference Court. Except the modification which is required to be made in the rate at which the claimants should be granted compensation, this Court finds that correct findings of facts have been recorded by the Reference Court to which well settled principles of law have been applied. It is well settled that the previous award of the Reference Court relating to the lands of a village which has attained finality would furnish a good piece of evidence and can be relied upon for the purpose of ascertaining the market value of the lands subsequently acquired from the same village. Therefore, this Court is of the opinion that the

Reference Court did not commit any error in placing reliance upon the previous award of the Reference Court relating to the lands of this very village for the purpose of determining the market value of the lands acquired in the instant case. The prayer that the award of the Special Land Acquisition Officer should be restored cannot be accepted but the impugned award will have to be modified by holding that the claimants would be entitled to compensation in all at the rate of Rs.25.50 ps. per sq.mt. for their acquired lands.

8. For the foregoing reasons, all the Appeals succeed in part. The common judgment and award dated January 24, 2005, rendered by the learned 2nd Extra Assistant Judge and Special Judge (LAR), Ahmedabad (Rural), in Land Acquisition Case No.201 of 2001 to 210 of 2001 awarding additional amount of compensation to the claimants at the rate of Rs.28.60 ps. per sq.mt. for their acquired lands over and above the compensation offered to them at the rate of Rs.2.25 ps. per sq.mt. for irrigated lands and Rs.1.50 ps. per sq.mt. for non-irrigated lands by the Special Land Acquisition Officer by his award dated June 16, 1999,

is hereby modified and it is held that the claimants would be entitled to compensation in all at the rate of Rs.25.50 ps. per sq.mt. for their acquired lands. The other benefits which have been conferred on the claimants by the impugned award are not interfered at all and are hereby confirmed. The Appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs.

9. The Registry is directed to draw decree in terms of this judgment at the earliest.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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